IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2130 OF 2005

T.Govind Bakariwala (since deceased
thr.his heirs and legal representatives)
1A. Thaisseri Yashoda Govind & ors ..Petitioners

versus

Sumanbai w/o Ramdas More & anr .. Respondents

Mr.K.K.Tated for Petitioners

Mr.P.S.Dani for Respondents

CORAM : D.G.KARNIK, J

DATED : 27th January, 2006

P.C.

1. This Writ Petition is directed against the judgment and order dated 1st March, 2005 passed by the 2nd Ad-hoc Additional District Judge, Malegaon in Civil Appeal No. 155 of 1998 confirming the decree for possession passed against the petitioner-tenant.

2. The suit premises were taken on rent by the petitioner-tenant from the respondent no.2 in the year 1962. The petitioner fell in arrears since April, 1994 and failed to pay the rent within one

month despite notice dated 10th March, 1995. The trial Court therefore passed a decree for possession and the lower appellate Court has confirmed the decree of the trial Court.

3. Learned counsel for the petitioner submits that one Mr.Sonawane issued a notice to the petitioner in the year 1992 claiming that he was the owner of the premises. In view of this notice, and the claim to the title made by Mr. Sonawane, the petitioner did not pay the rent to the respondent no. 2. The petitioner had even filed a suit bearing Regular Civil Suit No. 32 of 1995 as a interpleader suit for determining as to who was the landlord of the premises. It is in these circumstances, the rent was not paid. The petitioner was not a willful defaulter in non payment of the rent and was always ready and wiling to pay the rent to the true owner of the premises. He therefore submits that the decree for eviction passed by the two courts below is erroneous.

4. Admittedly, the petitioner was inducted in the suit premises by the respondent no. 2. Under section 116 of the Indian Evidence Act it is not open to a tenant to dispute the title of the landlord who inducts him in to the premises. In

Kisanchand Anandani v/s Shankar Bapu Sawant reported in 2004 (4) Mah.L.J. 757, I have already held that the fact that the third person had disputed the title of the plaintiff-landlord who had inducted a tenant in the premises was not a ground for the tenant not to pay the rent to the landlord. The matter is covered by the said decision. There is no merit in the petition which is hereby dismissed.

5. At the request of the learned counsel for the petitioner the petitioner is granted six months time for vacating the suit premises subject to his paying all the arrears of rent and furnishing of an undertaking on usual terms within four weeks from today.

(D.G. KARNIK, J)